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HOUSE BILL 796

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO TAXATION; PROVIDING TAX CREDITS FOR INTERESTS IN BIOMASS, GEOTHERMAL, SOLAR THERMAL AND SOLAR PHOTOVOLTAIC ELECTRIC GENERATING FACILITIES; CLARIFYING APPLICATION OF THE ADVANCED ENERGY TAX CREDITS TO PERSONS WITH LEASEHOLD OR PARTIAL INTERESTS IN CERTAIN ADVANCED ENERGY GENERATING FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] ADVANCED ENERGY INCOME TAX CREDIT.--

A. The tax credit that may be claimed pursuant to this section may be referred to as the "advanced energy income tax credit".

B. A taxpayer who holds an interest in a qualified

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1 generating facility and who files an individual New Mexico
2 income tax return may claim an advanced energy income tax
3 credit in an amount equal to no more than six percent of the
4 eligible generation plant costs of a qualified generating
5 facility, subject to the limitations imposed in this section.

6 C. To claim the advanced energy income tax credit,
7 a taxpayer shall submit with the taxpayer's New Mexico income
8 tax return a certificate of eligibility from the department of
9 environment stating that the facility in which the taxpayer
10 holds a proportionate interest in a qualified generating
11 facility and the taxpayer may be eligible for advanced energy
12 tax credits. The taxation and revenue department shall
13 determine the amount of advanced energy income tax credit for
14 which the taxpayer may apply.

15 D. A husband and wife who file separate returns for
16 a taxable year in which they could have filed a joint return
17 may each claim only one-half of the advanced energy income tax
18 credit that would have been allowed on a joint return.

19 E. A taxpayer who otherwise qualifies and claims an
20 advanced energy income tax credit and who is a member of a
21 partnership or owns interest in an entity that is a qualified
22 generating facility may claim the advanced energy income tax
23 credit only in relation to the taxpayer's interest in the
24 partnership or entity. The total advanced energy income tax
25 credit claimed by all members of the partnership or all of the

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1 owners of the entity shall not exceed the proportionate
2 interest allowed by the department for that partnership or
3 entity. The total amount of all advanced energy tax credits
4 claimed shall not exceed the total amount determined by the
5 department to be allowable pursuant to this section, the
6 Corporate Income and Franchise Tax Act and Section 7-9G-2 NMSA
7 1978.

8 F. Any balance of the advanced energy income tax
9 credit that the taxpayer is approved to claim may be claimed by
10 the taxpayer as an advanced energy combined reporting tax
11 credit allowed pursuant to Section 7-9G-2 NMSA 1978. If the
12 advanced energy income tax credit exceeds the amount of the
13 taxpayer's tax liabilities pursuant to the Income Tax Act and
14 Section 7-9G-2 NMSA 1978 in the taxable year in which it is
15 claimed, the balance of the unpaid credit may be carried
16 forward for ten years. The advanced energy income tax credit
17 is not refundable.

18 G. A taxpayer claiming the advanced energy income
19 tax credit pursuant to this section is ineligible for credits
20 pursuant to the Investment Credit Act or any other credit that
21 may be taken pursuant to the Income Tax Act or credits that may
22 be taken against the gross receipts tax, compensating tax or
23 withholding tax for the same expenditures.

24 H. The aggregate amount of all advanced energy tax
25 credits that may be claimed with respect to a qualified

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1 generating facility shall not exceed sixty million dollars
2 (\$60,000,000).

3 I. As used in this section:

4 (1) "advanced energy tax credit" means the
5 advanced energy income tax credit, the advanced energy
6 corporate income tax credit and the advanced energy combined
7 reporting tax credit;

8 (2) "biomass electric generating facility"
9 means any generating facility providing electricity to a public
10 utility that uses biomass as its primary fuel source, has a
11 nameplate capacity of one megawatt or more and:

12 (a) emits the lesser of: 1) what is
13 achievable with the best available control technology; or 2)
14 thirty-five thousandths pound per million British thermal units
15 of sulfur dioxide, twenty-five thousandths pound per million
16 British thermal units of oxides of nitrogen and one hundredth
17 pound per million British thermal units of total particulates
18 in the flue gas; and

19 (b) removes the greater of: 1) what is
20 achievable with the best available control technology; or 2)
21 ninety percent of the mercury from the input fuel;

22 (3) "biomass" means organic material that is
23 available on a renewable and recurring basis, including:

24 (a) forest-related materials, including
25 mill residues, logging residues, forest thinnings, slash,

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1 brush, low-commercial value materials or undesirable species,
2 salt-cedar and other phreatophyte or woody vegetation removed
3 from river basins or watersheds and woody material harvested
4 for the purpose of forest fire fuel reduction or forest health
5 and watershed improvement;

6 (b) agriculture-related materials,
7 including orchard trees, vineyard, grain or crop residues,
8 including straws and stover, aquatic plants and agricultural
9 processed co-products and waste products, including fats, oils,
10 greases, whey and lactose;

11 (c) animal waste, including manure and
12 slaughterhouse and other processing waste;

13 (d) solid woody waste material,
14 including landscape or right-of-way tree trimmings; rangeland
15 maintenance residues; waste pallets; and manufacturing,
16 construction and demolition wood wastes, excluding pressure-
17 treated, chemically treated or painted wood wastes and wood
18 contaminated with plastic;

19 (e) crops and trees planted for the
20 purpose of being used to produce energy;

21 (f) landfill gas, wastewater treatment
22 gas and biosolids, including organic waste byproducts generated
23 during the wastewater treatment process; and

24 (g) segregated municipal solid waste,
25 excluding tires and medical and hazardous waste;

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1 (4) "eligible generation plant costs" means
2 expenditures for the development and construction of a
3 qualified generating facility, including permitting; site
4 characterization and assessment; engineering; design; carbon
5 dioxide capture, treatment, compression, transportation and
6 sequestration; site and equipment acquisition; and fuel supply
7 development used directly and exclusively in a qualified
8 generating facility;

9 (5) "entity" means an individual, estate,
10 trust, receiver, cooperative association, club, corporation,
11 company, firm, partnership, limited liability company, limited
12 liability partnership, joint venture, syndicate or other
13 association or a gas, water or electric utility owned or
14 operated by a county or municipality;

15 (6) "geothermal electric generating facility"
16 means a facility with a name-plate capacity of one megawatt or
17 more that uses geothermal energy to generate electricity,
18 including a facility that captures and provides geothermal
19 energy to a preexisting electric generating facility using
20 other fuels in part;

21 (7) "interest in a qualified generating
22 facility" means title to a qualified generating facility; a
23 leasehold interest in a qualified generating facility; an
24 ownership interest in a business or entity that is taxed for
25 federal income tax purposes as a partnership that holds title

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1 to or a leasehold interest in a qualified generating facility;
2 or an ownership interest, through one or more intermediate
3 entities that are each taxed for federal income tax purposes as
4 a partnership, in a business that holds title to or a leasehold
5 interest in a qualified generating facility;

6 (8) "name-plate capacity" means the maximum
7 rated output of the facility measured as alternating current or
8 the equivalent direct current measurement;

9 (9) "proportionate interest" means a
10 taxpayer's direct and indirect ownership in the leasehold or
11 any other interest in a qualified generating facility, provided
12 that:

13 (a) the total of all interests of
14 taxpayers claiming advanced energy tax credits for the same
15 qualified generating facility shall not exceed one hundred
16 percent; and

17 (b) in the case where a leasehold
18 interest in a qualified generating facility is less than one
19 hundred percent of the interests claimed, the taxpayers holding
20 leasehold and nonleasehold interests shall apportion the
21 interests for purposes of applying for an advanced energy tax
22 credit so that all proportionate interests when totaled equal
23 one hundred percent;

24 (10) "qualified generating facility" means a
25 biomass electric generating facility that begins construction

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1 on or after July 1, 2009; a solar thermal electric generating
2 facility that begins construction on or after July 1, 2007 and
3 that may include an associated renewable energy storage
4 facility; a solar photovoltaic electric generating facility
5 that begins construction on or after July 1, 2009; a geothermal
6 electric generating facility that begins construction on or
7 after July 1, 2009; or a recycled energy project if that
8 facility or project begins construction no later than December
9 31, 2015; "qualified generating facility" also includes a new
10 or repowered coal-based electric generating unit and an
11 associated coal gasification facility, if any, that begins
12 construction no later than December 31, 2015 that meets the
13 following specifications:

14 (a) emits the lesser of: 1) what is
15 achievable with the best available control technology; or 2)
16 thirty-five thousandths pound per million British thermal units
17 of sulfur dioxide, twenty-five thousandths pound per million
18 British thermal units of oxides of nitrogen and one hundredth
19 pound per million British thermal units of total particulates
20 in the flue gas;

21 (b) removes the greater of: 1) what is
22 achievable with the best available control technology; or 2)
23 ninety percent of the mercury from the input fuel;

24 (c) captures and sequesters or controls
25 carbon dioxide emissions so that by the later of January 1,

.176155.3

1 2017 or eighteen months after the commercial operation date of
2 the qualified generating facility, no more than one thousand
3 one hundred pounds per megawatt-hour of carbon dioxide is
4 emitted into the atmosphere;

5 (d) all infrastructure required for
6 sequestration is in place by the later of January 1, 2017 or
7 eighteen months after the commercial operation date of the
8 qualified generating facility;

9 (e) includes methods and procedures to
10 monitor the disposition of the carbon dioxide captured and
11 sequestered from the facility; and

12 (f) does not exceed seven hundred net
13 megawatts name-plate capacity;

14 (11) "recycled energy" means energy produced
15 by a generation unit with a name-plate capacity of not more
16 than fifteen megawatts that converts the otherwise lost energy
17 from the exhaust stacks or pipes to electricity without
18 combustion of additional fossil fuel;

19 (12) "sequester" means to store, or
20 chemically convert, carbon dioxide in a manner that prevents
21 its release into the atmosphere and may include the use of
22 geologic formations and enhanced oil, coalbed methane or
23 natural gas recovery techniques;

24 (13) "solar photovoltaic electric generating
25 facility" means an electric generating facility with a name-

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1 plate capacity of two hundred fifty kilowatts or more that uses
2 solar photovoltaic energy to generate electricity; and

3 (14) "solar thermal electric generating
4 facility" means an electric generating facility with a name-
5 plate capacity of one megawatt or more that uses solar thermal
6 energy to generate electricity, including a facility that
7 captures and provides solar energy to a preexisting electric
8 generating facility using other fuels in part."

9 Section 2. A new section of the Corporate Income and
10 Franchise Tax Act is enacted to read:

11 "[NEW MATERIAL] ADVANCED ENERGY CORPORATE INCOME TAX
12 CREDIT.--

13 A. The tax credit that may be claimed pursuant to
14 this section may be referred to as the "advanced energy
15 corporate income tax credit".

16 B. A taxpayer that holds an interest in a qualified
17 generating facility and that files a New Mexico corporate
18 income tax return may claim an advanced energy corporate income
19 tax credit in an amount equal to no more than six percent of
20 the eligible generation plant costs of a qualified generating
21 facility, subject to the limitations imposed in this section.

22 C. To claim the advanced energy corporate income
23 tax credit, a taxpayer shall submit with the taxpayer's New
24 Mexico corporate income tax return a certificate of eligibility
25 from the department of environment stating that the taxpayer

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1 holds a proportionate interest in a qualified generating
2 facility and the taxpayer may be eligible for advanced energy
3 tax credits. The taxation and revenue department shall
4 determine the amount of advanced energy corporate income tax
5 credit for which the taxpayer may apply.

6 D. A taxpayer that otherwise qualifies and claims
7 an advanced energy corporate income tax credit and that is a
8 member of a partnership or owns interest in an entity that is a
9 qualified generating facility may claim the advanced energy
10 corporate income tax credit only in relation to the taxpayer's
11 interest in the partnership or entity. The total advanced
12 energy corporate income tax credit claimed by all members of
13 the partnership or all of the owners of the entity shall not
14 exceed the proportionate interest allowed by the department for
15 that partnership or entity. The total amount of all advanced
16 energy tax credits claimed shall not exceed the total amount
17 determined by the department to be allowable pursuant to this
18 section, the Income Tax Act and Section 7-9G-2 NMSA 1978.

19 E. Any balance of the advanced energy corporate
20 income tax credit that the taxpayer is approved to claim may be
21 claimed by the taxpayer as an advanced energy combined
22 reporting tax credit allowed pursuant to Section 7-9G-2 NMSA
23 1978. If the advanced energy corporate income tax credit
24 exceeds the amount of the taxpayer's tax liabilities pursuant
25 to the Corporate Income and Franchise Tax Act and Section

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1 7-9G-2 NMSA 1978 in the taxable year in which it is claimed,
2 the balance of the unpaid credit may be carried forward for ten
3 years. The advanced energy corporate income tax credit is not
4 refundable.

5 F. A taxpayer claiming the advanced energy
6 corporate income tax credit pursuant to this section is
7 ineligible for credits pursuant to the Investment Credit Act or
8 any other credit that may be taken pursuant to the Corporate
9 Income and Franchise Tax Act or credits that may be taken
10 against the gross receipts tax, compensating tax or withholding
11 tax for the same expenditures.

12 G. The aggregate amount of all advanced energy tax
13 credits that may be claimed with respect to a qualified
14 generating facility shall not exceed sixty million dollars
15 (\$60,000,000).

16 H. As used in this section:

17 (1) "advanced energy tax credit" means the
18 advanced energy income tax credit, the advanced energy
19 corporate income tax credit and the advanced energy combined
20 reporting tax credit;

21 (2) "biomass electric generating facility"
22 means any generating facility providing electricity to a public
23 utility that uses biomass as its primary fuel source, has a
24 nameplate capacity of one megawatt or more and:

25 (a) emits the lesser of: 1) what is

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1 achievable with the best available control technology; or 2)
2 thirty-five thousandths pound per million British thermal units
3 of sulfur dioxide, twenty-five thousandths pound per million
4 British thermal units of oxides of nitrogen and one hundredth
5 pound per million British thermal units of total particulates
6 in the flue gas; and

7 (b) removes the greater of: 1) what is
8 achievable with the best available control technology; or 2)
9 ninety percent of the mercury from the input fuel;

10 (3) "biomass" means organic material that is
11 available on a renewable and recurring basis, including:

12 (a) forest-related materials, including
13 mill residues, logging residues, forest thinnings, slash,
14 brush, low-commercial value materials or undesirable species,
15 salt-cedar and other phreatophyte or woody vegetation removed
16 from river basins or watersheds and woody material harvested
17 for the purpose of forest fire fuel reduction or forest health
18 and watershed improvement;

19 (b) agriculture-related materials,
20 including orchard trees, vineyard, grain or crop residues,
21 including straws and stover, aquatic plants and agricultural
22 processed co-products and waste products, including fats, oils,
23 greases, whey and lactose;

24 (c) animal waste, including manure and
25 slaughterhouse and other processing waste;

.176155.3

1 (d) solid woody waste material,
2 including landscape or right-of-way tree trimmings; rangeland
3 maintenance residues; waste pallets; and manufacturing,
4 construction and demolition wood wastes, excluding pressure-
5 treated, chemically treated or painted wood wastes and wood
6 contaminated with plastic;

7 (e) crops and trees planted for the
8 purpose of being used to produce energy;

9 (f) landfill gas, wastewater treatment
10 gas and biosolids, including organic waste byproducts generated
11 during the wastewater treatment process; and

12 (g) segregated municipal solid waste,
13 excluding tires and medical and hazardous waste;

14 (4) "eligible generation plant costs" means
15 expenditures for the development and construction of a
16 qualified generating facility, including permitting; site
17 characterization and assessment; engineering; design; carbon
18 dioxide capture, treatment, compression, transportation and
19 sequestration; site and equipment acquisition; and fuel supply
20 development used directly and exclusively in a qualified
21 generating facility;

22 (5) "entity" means an individual, estate,
23 trust, receiver, cooperative association, club, corporation,
24 company, firm, partnership, limited liability company, limited
25 liability partnership, joint venture, syndicate or other

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1 association or a gas, water or electric utility owned or
2 operated by a county or municipality;

3 (6) "geothermal electric generating facility"
4 means a facility with a name-plate capacity of one megawatt or
5 more that uses geothermal energy to generate electricity,
6 including a facility that captures and provides geothermal
7 energy to a preexisting electric generating facility using
8 other fuels in part;

9 (7) "interest in a qualified generating
10 facility" means title to a qualified generating facility; a
11 leasehold interest in a qualified generating facility; an
12 ownership interest in a business or entity that is taxed for
13 federal income tax purposes as a partnership that holds title
14 to or a leasehold interest in a qualified generating facility;
15 or an ownership interest, through one or more intermediate
16 entities that are each taxed for federal income tax purposes as
17 a partnership, in a business that holds title to or a leasehold
18 interest in a qualified generating facility;

19 (8) "name-plate capacity" means the maximum
20 rated output of the facility measured as alternating current or
21 the equivalent direct current measurement;

22 (9) "proportionate interest" means a
23 taxpayer's direct and indirect ownership in a leasehold or any
24 other interest in a qualified generating facility, provided
25 that:

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1 (a) the total of all interests of
2 taxpayers claiming advanced energy tax credits for the same
3 qualified generating facility shall not exceed one hundred
4 percent; and

5 (b) in the case where a leasehold
6 interest in a qualified generating facility is less than one
7 hundred percent of the interests claimed, the taxpayers holding
8 leasehold and nonleasehold interests shall apportion the
9 interests for purposes of applying for an advanced energy tax
10 credit so that all proportionate interests when totaled equal
11 one hundred percent;

12 (10) "qualified generating facility" means a
13 biomass electric generating facility that begins construction
14 on or after July 1, 2009; a solar thermal electric generating
15 facility that begins construction on or after July 1, 2007 and
16 that may include an associated renewable energy storage
17 facility; a solar photovoltaic electric generating facility
18 that begins construction on or after July 1, 2009; a geothermal
19 electric generating facility that begins construction on or
20 after July 1, 2009; or a recycled energy project if that
21 facility or project begins construction no later than December
22 31, 2015; "qualified generating facility" also includes a new
23 or repowered coal-based electric generating unit and an
24 associated coal gasification facility, if any, that begins
25 construction no later than December 31, 2015 that meets the

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1 following specifications:

2 (a) emits the lesser of: 1) what is
3 achievable with the best available control technology; or 2)
4 thirty-five thousandths pound per million British thermal units
5 of sulfur dioxide, twenty-five thousandths pound per million
6 British thermal units of oxides of nitrogen and one hundredth
7 pound per million British thermal units of total particulates
8 in the flue gas;

9 (b) removes the greater of: 1) what is
10 achievable with the best available control technology; or 2)
11 ninety percent of the mercury from the input fuel;

12 (c) captures and sequesters or controls
13 carbon dioxide emissions so that by the later of January 1,
14 2017 or eighteen months after the commercial operation date of
15 the qualified generating facility, no more than one thousand
16 one hundred pounds per megawatt-hour of carbon dioxide is
17 emitted into the atmosphere;

18 (d) all infrastructure required for
19 sequestration is in place by the later of January 1, 2017 or
20 eighteen months after the commercial operation date of the
21 qualified generating facility;

22 (e) includes methods and procedures to
23 monitor the disposition of the carbon dioxide captured and
24 sequestered from the facility; and

25 (f) does not exceed seven hundred net

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1 megawatts name-plate capacity;

2 (11) "recycled energy" means energy produced
3 by a generation unit with a name-plate capacity of not more
4 than fifteen megawatts that converts the otherwise lost energy
5 from the exhaust stacks or pipes to electricity without
6 combustion of additional fossil fuel;

7 (12) "sequester" means to store, or
8 chemically convert, carbon dioxide in a manner that prevents
9 its release into the atmosphere and may include the use of
10 geologic formations and enhanced oil, coalbed methane or
11 natural gas recovery techniques;

12 (13) "solar photovoltaic electric generating
13 facility" means an electric generating facility with a name-
14 plate capacity of two hundred fifty kilowatts or more that uses
15 solar photovoltaic energy to generate electricity; and

16 (14) "solar thermal electric generating
17 facility" means an electric generating facility with a name-
18 plate capacity of one megawatt or more that uses solar thermal
19 energy to generate electricity, including a facility that
20 captures and provides solar energy to a preexisting electric
21 generating facility using other fuels in part."

22 Section 3. Section 7-9G-2 NMSA 1978 (being Laws 2007,
23 Chapter 229, Section 1) is amended to read:

24 "7-9G-2. ADVANCED ENERGY COMBINED REPORTING TAX CREDIT--
25 GROSS RECEIPTS TAX--COMPENSATING TAX--WITHHOLDING TAX.--

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1 A. Except as otherwise provided in this section, a
2 taxpayer that holds an interest in a qualified generating
3 facility located in New Mexico may claim a credit to be
4 computed pursuant to the provisions of this section. The
5 credit provided by this section may be referred to as the
6 "advanced energy combined reporting tax credit".

7 B. As used in this section:

8 (1) "advanced energy tax credit" means the
9 advanced energy income tax credit, the advanced energy
10 corporate income tax credit and the advanced energy combined
11 reporting tax credit;

12 (2) "biomass electric generating facility"
13 means any generating facility providing electricity to a public
14 utility that uses biomass as its primary fuel source, has a
15 nameplate capacity of one megawatt or more and:

16 (a) emits the lesser of: 1) what is
17 achievable with the best available control technology; or 2)
18 thirty-five thousandths pound per million British thermal units
19 of sulfur dioxide, twenty-five thousandths pound per million
20 British thermal units of oxides of nitrogen and one hundredth
21 pound per million British thermal units of total particulates
22 in the flue gas; and

23 (b) removes the greater of: 1) what is
24 achievable with the best available control technology; or 2)
25 ninety percent of the mercury from the input fuel;

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1 (3) "biomass" means organic material that is
2 available on a renewable and recurring basis, including:

3 (a) forest-related materials, including
4 mill residues, logging residues, forest thinnings, slash,
5 brush, low-commercial value materials or undesirable species,
6 salt-cedar and other phreatophyte or woody vegetation removed
7 from river basins or watersheds and woody material harvested
8 for the purpose of forest fire fuel reduction or forest health
9 and watershed improvement;

10 (b) agriculture-related materials,
11 including orchard trees, vineyard, grain or crop residues,
12 including straws and stover, aquatic plants and agricultural
13 processed co-products and waste products, including fats, oils,
14 greases, whey and lactose;

15 (c) animal waste, including manure and
16 slaughterhouse and other processing waste;

17 (d) solid woody waste material,
18 including landscape or right-of-way tree trimmings; rangeland
19 maintenance residues; waste pallets; and manufacturing,
20 construction and demolition wood wastes, excluding pressure-
21 treated, chemically treated or painted wood wastes and wood
22 contaminated with plastic;

23 (e) crops and trees planted for the
24 purpose of being used to produce energy;

25 (f) landfill gas, wastewater treatment

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1 gas and biosolids, including organic waste byproducts generated
2 during the wastewater treatment process; and

3 (g) segregated municipal solid waste,
4 excluding tires and medical and hazardous waste;

5 ~~[(1)]~~ (4) "department" means the taxation and
6 revenue department, the secretary of taxation and revenue or
7 any employee of the department exercising authority lawfully
8 delegated to that employee by the secretary;

9 ~~[(2)]~~ (5) "eligible generation plant costs"
10 means expenditures for the development and construction of a
11 qualified generating facility, including permitting; site
12 characterization and assessment; engineering; design; carbon
13 dioxide capture, treatment, compression, transportation and
14 sequestration; site and equipment acquisition; and fuel supply
15 development used directly and exclusively in a qualified
16 generating facility;

17 (6) "entity" means an individual, estate,
18 trust, receiver, cooperative association, club, corporation,
19 company, firm, partnership, limited liability company, limited
20 liability partnership, joint venture, syndicate or other
21 association or a gas, water or electric utility owned or
22 operated by a county or municipality;

23 (7) "geothermal electric generating facility"
24 means a facility with a name-plate capacity of one megawatt or
25 more that uses geothermal energy to generate electricity,

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1 including a facility that captures and provides geothermal
2 energy to a preexisting electric generating facility using
3 other fuels in part;

4 (8) "gross receipts tax due to the state"
5 means the taxpayer's taxable gross receipts for the reporting
6 period multiplied by an amount equal to the difference between
7 the gross receipts tax rate specified in Section 7-9-4 NMSA
8 1978 for the period and:

9 (a) if the taxpayer's business location
10 is described in Subsection A of Section 7-1-6.4 NMSA 1978, one
11 and two hundred twenty-five thousandths percent; and

12 (b) if the taxpayer's business location
13 is not described in Subsection A of Section 7-1-6.4 NMSA 1978,
14 by the gross receipts tax rate specified in Section 7-9-4 NMSA
15 1978 for the period;

16 (9) "interest in a qualified generating
17 facility" means title to a qualified generating facility; a
18 leasehold interest in a qualified generating facility; an
19 ownership interest in a business or entity that is taxed for
20 federal income tax purposes as a partnership that holds title
21 to or a leasehold interest in a qualified generating facility;
22 or an ownership interest, through one or more intermediate
23 entities that are each taxed for federal income tax purposes as
24 a partnership, in a business that holds title to or a leasehold
25 interest in a qualified generating facility;

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1 (10) "name-plate capacity" means the maximum
2 rated output of the facility measured as alternating current or
3 the equivalent direct current measurement;

4 (11) "proportionate interest" means a
5 taxpayer's direct and indirect ownership in the leasehold or
6 any other interest in a qualified generating facility, provided
7 that:

8 (a) the total of all interests of
9 taxpayers claiming advanced energy combined reporting tax
10 credits for the same qualified generating facility shall not
11 exceed one hundred percent; and

12 (b) in the case where a leasehold
13 interest in a qualified generating facility is less than one
14 hundred percent of the interests claimed, the taxpayers holding
15 leasehold and nonleasehold interests shall apportion the
16 interests for purposes of applying for an advanced energy
17 combined reporting tax credit so that all proportionate
18 interests when totaled equal one hundred percent;

19 ~~[(3)]~~ (12) "qualified generating facility"
20 means a biomass electric generating facility that begins
21 construction on or after July 1, 2009, a [new] solar thermal
22 electric generating facility that begins construction on or
23 after July 1, 2007 and that may include an associated renewable
24 energy storage facility; a solar photovoltaic electric
25 generating facility that begins construction on or after July

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1 1, 2009; a geothermal electric generating facility that begins
2 construction on or after July 1, 2009; or a recycled energy
3 ~~[projects that]~~ project if that facility or project begins
4 construction no later than December 31, 2015 ~~[or]~~. "Qualified
5 generating facility" also includes a new or re-powered coal-
6 based electric generating unit and an associated coal
7 gasification facility, if any, that begins construction no
8 later than December 31, 2015 that meets the following
9 specifications:

10 (a) emits the lesser of: 1) what is
11 achievable with the best available control technology; or 2)
12 thirty-five thousandths pound per million British thermal units
13 of sulfur dioxide, twenty-five thousandths pound per million
14 British thermal units of oxides of nitrogen and one hundredth
15 pound per million British thermal units of total particulates
16 in the flue gas;

17 (b) removes the greater of: 1) what is
18 achievable with the best available control technology; or 2)
19 ninety percent of the mercury from the input fuel;

20 (c) captures and sequesters or controls
21 carbon dioxide emissions so that by the later of January 1,
22 2017 or eighteen months after the commercial operation date of
23 the qualified generating facility, no more than one thousand
24 one hundred pounds per megawatt-hour of carbon dioxide is
25 emitted into the atmosphere;

.176155.3

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1 (d) all infrastructure required for
2 sequestration is in place by the later of January 1, 2017 or
3 eighteen months after the commercial operation date of the
4 qualified generating facility;

5 (e) includes methods and procedures to
6 monitor the disposition of the carbon dioxide captured and
7 sequestered from the facility; and

8 (f) does not exceed seven hundred net
9 megawatts name-plate capacity;

10 [~~(4)~~] (13) "recycled energy" means energy
11 produced by a generation unit with a name-plate capacity of not
12 more than fifteen megawatts that converts the otherwise lost
13 energy from the exhaust stacks or pipes to electricity without
14 combustion of additional fossil fuel; [~~and~~

15 ~~(5)~~] (14) "sequester" means to store, or
16 chemically convert, carbon dioxide in a manner that prevents
17 its release into the atmosphere and may include the use of
18 geologic formations and enhanced oil, coalbed methane or
19 natural gas recovery techniques;

20 (15) "solar photovoltaic electric generating
21 facility" means an electric generating facility with a name-
22 plate capacity of two hundred fifty kilowatts or more that uses
23 solar photovoltaic energy to generate electricity; and

24 (16) "solar thermal electric generating
25 facility" means an electric generating facility with a name-

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1 plate capacity of one megawatt or more that uses solar thermal
2 energy to generate electricity, including a facility that
3 captures and provides solar energy to a preexisting electric
4 generating facility using other fuels in part.

5 C. Subject to the limit imposed in Subsection H of
6 this section, the advanced energy combined reporting tax credit
7 with respect to a qualified generating facility shall equal no
8 more than six percent of the eligible generation plant costs of
9 ~~[a]~~ the qualified generating facility. Taxpayers eligible to
10 claim an advanced energy combined reporting tax credit holding
11 proportionate interests in the qualified generating facility
12 shall designate an individual to report annually to the
13 department. That designated individual shall report the
14 eligible generation plant costs incurred during the calendar
15 year and the proportionate interest of those costs attributed
16 to each eligible interest holder. The taxpayers shall submit a
17 copy of the proportionate interests attributed to each interest
18 holder to the department, and any change to the apportioned
19 proportionate interests shall be submitted to the department.
20 The designated person and the department may identify a
21 mutually acceptable reporting schedule.

22 D. A taxpayer may apply for the advanced energy
23 combined reporting tax credit by submitting to the taxation and
24 revenue department a certificate issued by the department of
25 environment pursuant to Subsection I of this section,

.176155.3

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1 documentation showing the taxpayer's proportionate interest [~~in~~
2 ~~the qualified generating facility~~] identified in the
3 certificate, documentation of all eligible generation plant
4 costs incurred by the taxpayer prior to the date of the
5 application by the taxpayer for the advanced energy combined
6 reporting tax credit and any other information the taxation and
7 revenue department requests to determine the amount of tax
8 credit due to the taxpayer.

9 E. A taxpayer having applied for and been granted
10 approval [~~for a~~] to claim an advanced energy combined reporting
11 tax credit by the department pursuant to this section may claim
12 an amount of available credit against the taxpayer's gross
13 receipts tax, compensating tax or withholding tax due to the
14 state. Any balance of the advanced energy combined reporting
15 tax credit that the taxpayer is approved to claim after
16 applying that tax credit against the taxpayer's gross receipts
17 tax, compensating tax or withholding tax liabilities may be
18 claimed by the taxpayer against the taxpayer's tax liability
19 pursuant to the Income Tax Act by claiming an advanced energy
20 income tax credit or pursuant to the Corporate Income and
21 Franchise Tax Act by claiming an advanced energy corporate
22 income tax credit. The advanced energy combined reporting tax
23 credit is not refundable. The total amount of tax credit
24 claimed pursuant to this section, when combined with the tax
25 credits claimed pursuant to the Income Tax Act and the

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1 Corporate Income and Franchise Tax Act, shall not exceed the
2 amount approved by the department for the taxpayer's interest
3 in the qualified generating facility.

4 F. A taxpayer that is liable for the payment of
5 gross receipts or compensating tax with respect to the
6 ownership, development, construction, maintenance or operation
7 of a new coal-based electric generating facility that does not
8 meet the criteria for a qualified generating facility and that
9 begins construction after January 1, 2007 shall not claim an
10 advanced energy tax combined reporting credit pursuant to this
11 section or a gross receipts tax credit, a compensating tax
12 credit or a withholding tax credit pursuant to any other state
13 law.

14 G. If the amount of the tax credit claimed exceeds
15 the taxpayer's liability, the excess may be carried forward for
16 up to [~~five~~] ten years.

17 H. The aggregate amount of tax credit that may be
18 claimed with respect to each qualified generating facility
19 shall not exceed sixty million dollars (\$60,000,000).

20 I. An entity that holds [~~title to~~] an interest in
21 a qualified generating facility may request a certificate of
22 eligibility from the department of environment to enable the
23 requester to apply for the advanced energy combined reporting
24 tax credit. The department of environment:

25 (1) shall determine if the facility is a

.176155.3

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1 qualified generating facility;

2 (2) shall require that the requester provide
3 the department of environment with the information necessary to
4 assess whether the requester's facility meets the criteria to
5 be a qualified generating facility;

6 (3) shall issue a certificate to the
7 requester stating that the facility is or is not a qualified
8 generating facility within one hundred eighty days after
9 receiving all information necessary to make a determination;

10 (4) shall:

11 (a) issue rules governing the procedure
12 for administering the provisions of this subsection and
13 Subsection J of this section;

14 (b) issue a schedule of fees in which no
15 fee exceeds one hundred fifty thousand dollars (\$150,000); and

16 (c) deposit fees collected pursuant to
17 this paragraph in the state air quality permit fund created
18 pursuant to Section 74-2-15 NMSA 1978; and

19 (5) shall report annually to the appropriate
20 interim legislative committee information that will allow the
21 legislative committee to analyze the effectiveness of the
22 advanced energy tax [~~credit~~] credits, including the identity of
23 qualified generating facilities, the energy production means
24 used, the amount of emissions identified in this section
25 reduced and removed by those qualified generating facilities

.176155.3

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1 and whether any requests for certificates of eligibility could
2 not be approved due to program limits.

3 J. If the department of environment issues a
4 certificate of eligibility to a taxpayer stating that the
5 taxpayer ~~[is]~~ holds an interest in a qualified generating
6 facility and the taxpayer does not sequester or control carbon
7 dioxide emissions to the extent required by this section by
8 the later of January 1, 2017 or eighteen months after the
9 commercial operation date of the qualified generating
10 facility, the taxpayer's certification as a qualified
11 generating facility shall be revoked by the department of
12 environment and the taxpayer shall ~~[refund]~~ repay to the state
13 tax credits granted pursuant to this section; provided that if
14 the taxpayer demonstrates to the department of environment
15 that the taxpayer made every effort to sequester or control
16 carbon dioxide emissions to the extent feasible and the
17 facility's inability to meet the sequestration requirements of
18 a qualified generating facility was beyond the facility's
19 control, in which case the department of environment shall
20 determine, after a public hearing, the amount of the tax
21 credit that should be ~~[refunded]~~ repaid to the state. The
22 department of environment, in its determination, shall
23 consider the environmental performance of the facility and the
24 extent to which the inability to meet the sequestration
25 requirements of a qualified generating facility was in the

.176155.3

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1 control of the taxpayer. The [~~refund~~] repayment as determined
2 by the department of environment shall be paid within one
3 hundred eighty days following a final order by the department
4 of environment.

5 K. Expenditures for which a taxpayer claims [~~a~~] an
6 advanced energy combined reporting tax credit pursuant to this
7 section are ineligible for credits pursuant to the provisions
8 of the Investment Credit Act or any other credit against
9 personal income tax, corporate income tax, compensating tax,
10 gross receipts tax or withholding tax.

11 L. A taxpayer shall apply for approval for a
12 credit within one year following the end of the calendar year
13 in which the eligible generation plant costs are incurred."